HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Saturday, May 4, 2013
83rd Legislature, Number 66
The House convenes at 10 a.m.
Part Two

Forty-nine bills are on the daily calendar for second-reading consideration today. The bills on the General State Calendar analyzed and digested in Part Two of today's *Daily Floor Report* are listed on the following page.

One postponed bill, HB 2072 by E. Rodriguez, et al., is on the supplemental calendar for second-reading consideration today. The bill analysis is available on the HRO website at http://www.hro.house.state.tx.us/pdf/ba83r/hb2072.pdf.

Bill Callegari
Chairman
83(R) – 66

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Saturday, May 4, 2013
83rd Legislature, Number 66
Part Two

HB 2446 by Crownover	Clean energy tax credits for CO2 capture	88
HB 3671 by Cook	Crime victims to be considered with respect to a motion for continuance	92
HB 3427 by Lavender (D)	Allowing interstate transport agreements for mental health patients	94
HB 3459 by Eiland	Revising certain provisions governing open beaches	96
HB 3463 by Bohac	Providing financial information to recipients of benefits or assistance	99
HB 1133 by Otto	Tax refund for property used in cable TV, Internet, or telecom services	101
HB 1736 by Anchia	Exempting certain landfill-generated gas operations from ad valorem tax	104
HB 3808 by Farney	Evaluating the performance of dropout recovery schools	108
HB 1748 by Branch	Life without parole for super aggravated sexual assault	111
HB 1772 by C. Turner (D)	Disconnection notices at certain multifamily housing properties	114
HB 26 by Martinez Fischer	Unemployment compensation eligibility for victims of sexual assault	117
HB 3285 by Y. Davis	Requiring reports of patient deaths from surgical site infections	120
HB 2268 by Frullo	Search warrants issued in Texas and other states for certain electronic data	122
HB 2887 by J. Davis	Funding projects to address homelessness, mental illness, substance abuse	128
HB 3668 by Naishtat	Responsibilities following certain accidents, imposing criminal penalties	131
HB 928 by Krause	Local government entities' non-enforcement of federal firearm laws	134
HB 3162 by J. Davis (D)	Changes to the Texas Emerging Technology Fund	137
HB 170 by Alonzo	Covering mammograms by providers other than primary care physicians	139
HB 1908 by Eiland	Capping the combined hotel occupancy tax rate	141
HB 3805 by Gonzales	Eliminating hearings for discharged employees of DPS	143
HB 2532 by Workman	Regulation of propane distribution system retailers	145
HB 2694 by Villarreal	Providing credit by examination for public school students	148
HB 2330 by Gooden	Traffic regulation in a conservation and reclamation district	152
HB 3536 by Otto	Imposing fees on sales of certain tobacco products	154

SUBJECT: Clean energy tax credits for CO_2 capture

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 10 ayes — Keffer, Crownover, Canales, Craddick, Dale, P. King, Lozano, Paddie, R. Sheffield, Wu

0 nays

1 absent — Burnam

WITNESSES: For — Gary Gibbs, American Electric Power Company; Charles McConnell; Mike Nasi, Clean Carbon Technology Foundation of Texas; Mark Walker, Clean Carbon Technology Foundation of Texas (*Registered but did not testify*: Walt Baum, AECT; Grace Chimene, Texas League of Woman Voters; Lisa McCurley, Sargas Texas; Stephen Minick, Texas Association of Business; John Orr, Exelon Corporation; Trey Powers, Texas Mining and Reclamation Association; Tom Sellers, ConocoPhillips; Chris Shields, Tenaska)

Against — Tom "Smitty" Smith, Public Citizen (*Registered, but did not testify*: Rita Beving; Karen Hadden, SEED Coalition; Dick Lavine, Center for Public Policy Priorities)

On — Laura Miller, Summit Power; Cyrus Reed, Lone Star Chapter - Sierra Club

BACKGROUND: Natural Resources Code, sec. 120.001 defines a clean energy project as a project to construct a coal-fueled or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that will:

- have a capacity of at least 200 megawatts;
- meet the emissions Health and Safety Code profile for an advanced clean energy project;
- capture at least 70 percent of the carbon dioxide (CO_2) resulting from generated electricity;
- be capable of permanently sequestering CO_2 captured in a geological formation, and

- be able to supply captured carbon dioxide for an enhanced oil recovery project.

DIGEST:

CSHB 2446 would transfer Government Code, ch. 490, subch. H to Tax Code, ch. 171 with the designation subch. L.

The bill would authorize a franchise tax credit for an entity that implemented a clean energy project and received a certificate of compliance from the Railroad Commission of Texas (RRC).

The total amount a taxable entity could claim, including any carryforward credit, could not exceed the amount of franchise tax due for the report after any applicable tax credits. If the entity was eligible to claim credits exceeding that limitation, it could carry unused credits forward for up to 20 consecutive reports. The entity designated in a clean energy project certificate of compliance could assign the credit to another entity to claim as a credit against its franchise tax.

The comptroller could not issue a credit before the later of September 1, 2018 or the expiration of the Tax Code's Economic Development Act (ch. 313) provisions for a clean energy project for which the credit was issued.

The bill would amend the Health and Safety Code's definition of an "advanced clean energy project" to include specifying natural gas among the types of fuel that could be used to generate electricity and setting standards for the annual sulfur dioxide emissions rate from an associated facility designed for the use of combustion turbines that burn natural gas.

CSHB 2446 would amend the Natural Resources Code's definition of a "clean energy project" to include a natural gas-fueled facility that met the current standards in sec. 120.001.

The bill would allow an entity to apply for the RRC's certification of a clean energy project on or after September 1, 2018. Only one of an entity's three allowable clean energy projects could be a natural gas project.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS

CSHB 2446 would provide the proper incentives to encourage CO_2

SAY:

capture from natural gas-fueled electricity plants, which would encourage enhanced oil recovery (EOR) using CO_2, help to meet stricter Environmental Protection Agency (EPA) standards and encourage capital investment and electricity generation to meet the growing demand of Texas' population.

The dearth of anthropogenic (man-made) CO_2 is the primary barrier to expanding EOR. CSHB 2446 would provide the proper incentives for the construction of natural gas electricity plants and the retrofit of existing ones that would capture CO_2. It is estimated that as many as 30 billion barrels of petroleum could be recovered using EOR technology with sufficient CO_2.

Capturing CO_2 for use in EOR would allow CO_2 to be injected in geologic formations rather than being released into the atmosphere, which would help Texas prepare to meet potential EPA clean air guidelines.

The 81st Legislature in 2009 enacted HB 469 by P. King to incentivize carbon sequestration for coal-burning electricity plants, which led to significant investment in Texas, electricity production, and CO_2 sequestration. In recent years, lower natural gas prices have made construction of gas-powered electricity plants more feasible, and CSHB 2446 would provide the same incentives to pave the way for private companies to invest in CO_2-capturing electricity plants powered with natural gas.

To address the concerns of critics, the author intends to offer a floor amendment that would provide stringent nitrogen oxide emissions standards for natural gas-powered electricity plants and ensure that gas and coal-powered electricity plants continued to operate at the same elevated mercury emissions standard.

OPPONENTS SAY:

CSHB 2446's language regarding sulfur dioxide and nitrogen oxide emissions should be stronger. The bill would not require natural gas plants to meet the lowest achievable standards using today's technology.

NOTES:

The author intends to offer a floor amendment that would revise nitrogen oxide emissions standards for natural gas-powered electricity plants and specify that gas and coal-powered electricity plants would continue to operate at the same elevated mercury emissions standard.

According to the fiscal note, CSHB 2446 would result in a negative impact to general revenue related funds of $4 million in fiscal 2017, rising to about $9 million annually by fiscal 2019.

SUBJECT: Crime victims to be considered with respect to a motion for continuance

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth

0 nays

1 absent — Hughes

WITNESSES: For — (*Registered, but did not testify*: Diana Martinez, The Texas Association for the Protection of Children, TexProtects)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 29.14 requires a court considering a defendant's motion for continuance, on the prosecutor's request, to consider the impact of the continuance on the victim. This requirement applies only if the case involves family violence or the victim is younger than 17 years of age and is a victim of assault or sexual assault.

Code of Criminal Procedure, art. 56.02 enumerates certain rights of a victim, guardian of a victim, or close relative of a deceased victim within the criminal justice system. One of the enumerated items is the right to consideration by the court as described by art. 29.14.

Penal Code, sec. 22.04 governs the offenses for injury to a child, elderly individual, or disabled individual.

DIGEST: HB 3671 would add a child victim of an offense under Penal Code, sec. 22.04 to the list of victims a court would be required to consider when considering a defendant's motion for continuance under Code of Criminal Procedure, art. 29.14 and art. 56.02.

The bill would add the right to a speedy trial, if requested by the attorney for the state, for a child victim of an offense under Penal Code, sec. 22.04 to the list of victim's rights enumerated under Code of Criminal Procedure, art. 56.02.

The bill would take effect September 1, 2013, and would apply only to a criminal proceeding that commenced on or after that date.

SUPPORTERS SAY:

HB 3671 would protect children who were victims of violent crime. Currently, the protection afforded by law does not apply to children who are victims of abuse from someone other than a family member. Delays and continuances in trials are a leading factor of stress for child victims in these types of cases and should be minimized as often as possible. The U.S. Attorney General recommends that judges and prosecutors handling cases with child victims ensure that these cases are tried expeditiously, and 23 other states have enacted legislation similar to this bill to ensure that level of protection and expeditiousness. By ensuring that courts consider the impact a continuance would have on these victims, the bill would prioritize this expeditiousness.

The bill would protect the rights of the most vulnerable victims of heinous crimes. Children who are victims of violence suffer stress and emotional and psychological impacts of a prolonged trial and deserve special consideration during the consideration of a motion for continuance. The bill includes language to ensure that a defendant's right to a fair trial would not be negatively impacted.

OPPONENTS SAY:

HB 3671 would contribute to the current trend of enumerating new victims' rights, which could erode the rights of defendants. The increasingly victim-driven justice system leads to a vigilante system of justice rather than one that seeks to do justice and that properly protects the rights of the accused. The bill could implicate a defendant's right to a fair trial if motions for continuance became less likely to prevail and defendants were pushed into trial without adequate time to prepare.

SUBJECT: Allowing interstate transport agreements for mental health patients

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield

0 nays

2 absent — Coleman, Zedler

WITNESSES: For — Andre Storey, Christus St. Michael Health System; (*Registered, but did not testify*: Michelle Apodaca, Tenet Healthcare Corp.; Carrie Kroll, Texas Hospital Association; Sister Michele OBrien; Linda Townsend, Christus Health)

Against — None

On — Peggy Perry, Department of State Health Services

BACKGROUND: Health and Safety Code, sec. 571.008, authorizes the Department of State Health Services to enter into reciprocal agreements with the proper agencies of other states to help return persons committed to mental health facilities in Texas or another state to the states of their residence.

Health and Safety Code, ch. 612, is the Interstate Mental Health Compact. This interstate compact applies only to individuals who are involuntarily committed to a state-owned facility. CSHB 3427 would not affect the use of the interstate compact.

DIGEST: CSHB 3427 would authorize the Department of State Health Services to enter into reciprocal agreements with state or local authorities of other states to return persons committed to mental health facilities in Texas or another state to the states of their residence. The bill would define a state or local authority as a "state or local government authority or agency acting in an official capacity."

The department would have to enter into reciprocal agreements unless the terms were unacceptable. If the states did not agree to share costs, the state

returning the patient would bear the expenses. Reciprocal agreements would require the department to develop a process for returning committed individuals to their state of residence. The process would have to:

- provide suitable care;
- efficiently use available resources; and
- consider commitment to a proximate mental health facility to help return non-residents to their state of residence.

With respect to reciprocal agreements, a mental health facility could be any hospital or facility designated as a place of commitment by the department, a local mental health authority, and an authority from the contracting state. If appropriate, the department would have to coordinate with the contracting state's mental health facilities, mental hospitals, health service providers, courts, and law enforcement personnel nearest to Texas. This bill would only apply to reciprocal agreements entered into after September 1, 2013.

This bill would take effect September 1, 2013.

SUBJECT: Revising certain provisions governing open beaches

COMMITTEE: Land and Resource Management — favorable, without amendment

VOTE: 7 ayes — Deshotel, Walle, Frank, Goldman, Herrero, Parker, Springer

1 nay — Simpson

1 absent — Paddie

WITNESSES: For — Jerry Patterson, General Land Office (*Registered, but did not testify:* Tom Tagliabue, City of Corpus Christi)

Against — Bill Peacock and Vikrant Reddy, Texas Public Policy Foundation

On — Marcus Brakewood and Ellis Pickett, Surfrider Foundation; David Land, General Land Office; AR "Babe" Schwartz (*Registered, but did not testify*: Jax Claiborn and Morris, Surfrider Foundation)

BACKGROUND: The Texas Open Beaches Act, Natural Resources Code, ch. 61, grants the public free and unrestricted right to access state-owned beaches and a right to use any public beach or larger area extending from the line of mean low tide to the line of vegetation bordering the Gulf of Mexico. The "line of vegetation" is defined as the seaward boundary of natural vegetation that spreads continuously inland. The act applies to all beaches to which the public has acquired a right of use or an easement under principles of Texas common law.

DIGEST: HB 3459 would allow the land commissioner to issue an order to suspend action on conducting a "line of vegetation" determination for a period of up to three years upon determining that the line of vegetation was obliterated as a result of a meteorological event. For the duration of the order, the public beach would extend to a line 200 feet inland from the line of mean low tide.

Issuing an order to suspend would be purely at the discretion of the land commissioner and would not create a private cause of action for issuing or failing to issue the order.

Under HB 3459, the land commissioner could promulgate rules on the temporary suspension of a determination of the "line of vegetation." An order to suspend would have to be posted on the GLO's website, published in the Texas Register, and filed in the real property records of the associated county. The order would not be subject to provisions waiving sovereign immunity for the taking of private property by a political subdivision. A statute of limitations would not apply to an order for suspensions.

Following the expiration of an order to suspend, the land commissioner would make a determination regarding the line of vegetation, taking into consideration the effect of the meteorological event on the location of the public beach easement.

The line of vegetation would constitute the landward boundary of the area subject to public easement until the line of vegetation moved landward due to a subsequent meteorological event, erosion, or public use, or until a final court adjudication establishes the line in another place.

The bill would add language stating that the "line of vegetation" was dynamic and could move landward due to the forces of erosion. For the purposes of determining the public beach easement, if the "line of vegetation" was obliterated due to a meteorological event, the landward boundary of the area subject to the public easement would be the line established by the commissioner under a line of vegetation determination.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 3459 would strike a balance between protecting private property rights and the public's right to access a beach following catastrophic weather events, such as hurricanes.

The bill is necessary to address what is something of a legal limbo resulting from a Texas Supreme Court decision, *Severance v. Patterson*, which found that erosion that suddenly changed the location of the dry beach, such as that caused by an aversive event (storms or hurricanes), did not move the established public easement from its original location. Under the *Severance* decision, it is not entirely clear what role the land commissioner should assume for determining the boundaries of a public beach in the long term after erosion caused by a major weather event.

HB 3459 would create a process whereby the land commissioner could suspend the designation of a new line of vegetation for three years. Providing a three-year window after a major storm would provide the time necessary to see how public access to the beach — the area between mean low tide and the line of vegetation — was affected by the hurricane in the long-term. The bill would extend to the interim period before the commissioner made a line of vegetation determination a provision currently in statute that defines public access as the area that is 200 feet landward from mean low tide.

Charges that the bill could result in an unconstitutional taking are misplaced. If a hurricane were to cause significant changes to a coastline that, three years after the incident, resulted in a public easement extending further onto private property, then that extension would not be attributable to the state but rather to vagaries of mother nature.

OPPONENTS SAY:

HB 3459 could result in an unconstitutional taking of private property. The Texas Constitution prohibits a person's property from being taken, damaged, or destroyed for a public use without adequate compensation. HB 3459 would tilt the current legal balance against the property owner in the case of a major weather event, such as a hurricane, that obliterated the line of vegetation. In allowing a delayed designation of a line of vegetation, the bill would allow the land commissioner to arbitrarily redraw a public easement over formerly private land, effectively taking the land for a public purpose without due compensation.

There are perfectly sufficient means in current law to accommodate any changes in a public beach that resulted from a hurricane. State and local governments can take private land for a public beach through eminent domain, provided they offer due compensation for the taking. Provisions in HB 3459 essentially would skirt this requirement and effectively allow the state to acquire private land for free.

SUBJECT: Providing financial information to recipients of benefits or assistance

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Raymond, Fallon, Klick, Sanford, Scott Turner, Zerwas

3 nays — N. Gonzalez, Naishtat, Rose

WITNESSES: For — (*Registered, but did not testify:* Bee Moorhead, Texas Impact)

Against — Celia Cole, Texas Food Bank Network; Rachel Cooper, Center for Public Policy Priorities; (*Registered, but did not testify:* Anne Olson, Texas Baptist Christian Life Commission)

On — Stephanie Muth, Health and Human Services Commission; (*Registered, but did not testify:* Stephanie Stephens, Health and Human Services Commission)

BACKGROUND: Human Resources Code, ch. 31, governs financial assistance and service programs, including Temporary Assistance for Needy Families (TANF) assistance.

Human Resources Code, ch. 32, governs Medicaid.

Human Resources Code, ch. 33, governs the Supplemental Nutrition Assistance Program (SNAP), formerly called food stamps.

DIGEST: HB 3463 would require the Health and Human Services Commission, when recertifying a person to receive TANF or other financial assistance, Medicaid, or SNAP benefits, to provide information regarding the total amount of benefits or assistance received by the person under all of the programs in the previous year.

SUPPORTERS SAY: The intent and focus of HB 3463 would be personal financial education. By providing recipients of financial assistance, medical assistance, and nutrition benefits with a yearly financial statement, the bill would provide an additional tool for Texans to understand their finances.

The statement would be no different nor more humiliating than receiving a yearly health benefits statement from a health insurance company or a yearly employee benefits statement from a private employer. Benefits recipients receiving a yearly statement would be able to make decisions about their finances just as recipients of a yearly health benefits statement would use the statement to inform their financial decisions.

OPPONENTS SAY:

HB 3463 would create a disincentive for people to seek help when they truly needed it. State benefits programs are designed to provide basic necessities only to households who are in financial straits. A high percentage of SNAP households include a child or an elderly household member, and the majority of TANF recipients are children.

Sending recipients a yearly statement to show what they received from the state would give them the impression it was the wrong thing to do. The bill is unnecessary, as benefits and assistance programs already have rules to encourage self-sufficiency. A financial statement would not help households to make better financial decisions if they already knew they were poor by the act of qualifying for assistance.

SUBJECT: Tax refund for property used in cable TV, Internet, or telecom services

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez

0 nays

3 absent — Martinez Fischer, Ritter, Strama

WITNESSES: For — Robert Howden, Texans for Economic Progress; Max Jones, The Greater Houston Partnership; John Kennedy, Texas Taxpayers & Research Association; Richard Lawson, Verizon; James LeBas, Texas Cable Association; Scott Mackey, Wireless Telecommunications Providers; Leslie Ward, AT&T; (*Registered, but did not testify:* Joe Arabie, Allied Workers L.U. 22; Louis Bacarisse, Texas Statewide Telephone Cooperatives, Inc.; Todd Baxter, Time Warner Cable; Nora Belcher, Texas e-Health Alliance; Jennifer Bergland, Texas Computer Education Association; Donna Bogue, SUPERNet/NETNet; Jeff Burdett, Texas Cable Association; Jose Camacho, Texas Telephone Association; John Colyandro, Texas Conservative Coalition; Velma Cruz, Sprint; Deborah Giles, SHI Government Solutions; Currie Hallford, Texas Political & Legislative Committee/TPLC-CWA; Patrick Hogan, Texas Technology Consortium; Homero Lucero, CenturyLink; Annie Mahoney, Texas Conservative Coalition; Leo Munoz, Comcast; John Orbaugh; Texas K-12 CTO Council; Bill Peacock, Texas Public Policy Foundation; Wendy Reilly, TechAmerica; Shayne Woodard, Big Bend Telephone Company; Geoff Wurzel, TechNet)

Against —Jeff Coyle, City of San Antonio; Dick Lavine, Center for Public Policy Priorities

DIGEST: CSHB 1133 would grant providers of cable television service, Internet access service, or telecommunications services a refund of the sales-and-use taxes paid on tangible personal property if the provider directly used or consumed the property in or during:

- the distribution of cable television service;
- the provision of Internet access service;

- the transmission, conveyance, routing, or reception of telecommunication services.

The amount of a refund that a provider could receive would be limited to the amount paid in sales taxes on eligible property or, if the total pool of requested refunds exceeded $50 million in a calendar year, a pro rata share of that $50 million.

The refund proposed by CSHB 1133 would not apply to sales taxes imposed by local governments. Property used or consumed in providing a data processing or information service would not be eligible for a refund.

The bill would take effect on September 1, 2013.

SUPPORTERS SAY:

CSHB 1133 would spur massive new investment in the cable TV, Internet access, and telecom markets in Texas through a targeted tax cut. CSHB 1133 would allow providers of these services to reclaim part or all of the sales tax they paid on the purchase of materials invested in these markets.

According to a 2012 study by Telecom Advisory Services, investment in telecommunications and related technologies are sensitive to sales taxes. Eliminating the sales tax on cable TV investments in Texas would result in a per capita increase in investments of $2.55. Eliminating the sales tax on wireline and wireless investments would increase per capita investments by $7.04. In total, the increase in investment in the first year would amount to $242 million and would result in a 123.1 percent share of savings reinvested. Even the pro rata reimbursements created by CSHB 1133 would provide a powerful incentive for investment in Texas.

It is important to make Texas more attractive to these industries because they are at the vanguard of the high-tech economy that is starting to transform Texas. It is important to foster these industries because the jobs CSHB 1133 would help create in installation and maintenance of high tech networks would be high-paying positions. Creating good jobs in Texas would be a praiseworthy use of a tax cut.

CSHB 1133 would not break the bank. The bill would establish a limit of $50 million on the amount of refunds that could be made annually. If the amount of eligible refunds exceeded $50 million, then each claimant would be entitled to a pro rata share of the $50 million limit.

CSHB 1133 would protect local governments. The bill would exempt local sales taxes from the proposed refund.

OPPONENTS SAY:

CSHB 1133 would cost the state $100 million in lost sales tax revenue every fiscal biennium. The Legislature cannot continue to grant new corporate tax handouts when it has not yet properly planned for ongoing and expected expenses, including restoring the cuts it made to the state's public education system last session and adequately planning for expected expansion in Medicaid enrollment.

The investment CSHB 1133 hopes to spur would occur anyway because Texas is a robust and rapidly growing market. Texas has an expanding customer base ensuring investment by businesses hoping to sign up new customers and sell new products and services to existing ones.

NOTES:

According to the Legislative Budget Board, the state sales tax exemption in CSHB 1133 would have a negative impact of $100 million to general revenue related funds in fiscal 2014-15.

SUBJECT: Exempting certain landfill-generated gas operations from ad valorem tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 7 ayes — Hildebrand, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

2 absent — Martinez Fischer, Ritter

WITNESSES: For —John Brunswick, National Association of Property Tax Association; Luke Morrow, Morrow Renewables; Marty Ryan, Montauk Energy; Stephen Smith, Dallas Clean Energy Commas Bluff, LLC; Amy Stowe Brunswick & Associates; Evan Williams, Cambrian Energy & Dallas Clean Energy; *(Registered, but did not testify:* Steve Carr, Republic Services; Chris Macomb, Waste Management of Texas, Inc.; Stephen MI nick, Texas Association of Business; Tom Tagliabue, City of Corpus Christi*)*

Against — Rodrigo Carrion; David Hodgkin's, Tax Exemption School Coalition; Donald Lee, Texas Conference of Urban Counties; Bennett Sandlin, Texas Municipal League; Robin Schneider, Texas Campaign for the Environment; *(Registered, but did not testify:* Brad Dominguez, Tax Exemption School Coalition; Mark Mendez, Tarrant County; Seth Mitchell, Bexar County Commissioners Court; Jim Robinson, Texas Association of Appraisal Districts Legislative Committee; Terry Simpson, San Patricio County*)*

On — Donna Huff, Texas Commission on Environmental Quality; *(Registered, but did not testify:* Tim Wooten, Comptroller*)*

BACKGROUND: Landfill waste produces significant amounts of landfill gas, mostly methane. This gas is created when organic waste in a municipal solid waste landfill decomposes. Because methane is a greenhouse gas and could cause fire and explosions, federal and state laws require operators of large landfills to install pollution control equipment to collect and destroy the landfill gas produced, typically through flaring.

There are currently 32 landfill-gas-to-energy projects operating in Texas

that capture the gas that would otherwise be flared and convert it to some form of fuel or electricity. Of those projects, five have the capability to produce pipeline quality renewable gas.

DIGEST:

CSHB 1736 would provide a temporary ad valorem tax exemption on property used for pollution control for certain landfill-generated gas conversion facilities capable of producing pipeline quality gas, expiring December 31, 2015.

This bill would take effect on January 1, 2014.

SUPPORTERS SAY:

CSHB 1736 would help address some of the economic challenges facing the five facilities in Texas with projects in place to convert landfill generated methane into renewable natural gas. These landfill-generated gas operations capture the methane and convert it into a more environmentally friendly form of fuel. Without these projects, the gas otherwise would be flared, producing on-site emissions and wasting a valuable energy source.

In addition to eliminating on-site emissions and capturing an otherwise wasted fuel source, the projects also would reduce the fire risk and extend the life of the landfills by 10 years or more by compressing the solid waste they contain in an effort to extract the gas. Despite their environmental benefits, these projects have not proven to be economically viable due to the heavy capital investment required, causing some projects to have to pull out all together. CSHB 1736 would allow a temporary ad valorem tax exemption for landfill-generated gas conversion facilities in Texas that are capable of producing pipeline quality gas. Without this exemption these facilities may not be able to continue operation.

While there is concern that these facilities are trying to double-recover costs for equipment, they have never been able to benefit from the existing tax exemptions. The current laws that provide tax exemptions for property used for pollution control do not contemplate the unique nature of these projects. Other facilities that are able to benefit from the existing exemption for pollution control equipment actually generate their own pollution and then seek to control it, while these projects help to control pollution that is already occurring naturally at landfill sites. This bill would provide temporary tax relief while Texas updated the process for applying for an exemption.

The committee substitute would narrow the exemption to only the five existing projects and would Sunset the exemption in 2015. By narrowing the scope of the bill, the potential fiscal impact to local governmental entities would be minimal. While some suggest trying to achieve the tax exemption through a local option that would be a cumbersome process that could cost more than the exemption would be worth.

OPPONENTS SAY:

CHB 1736 would allow certain landfill generated gas facilities to double-recover expenses for pollution control equipment through an additional tax exemption. State and federal law mandate that pollution control equipment be attached to facilities that could produce pollution, including landfills. Pollution control equipment is costly, resulting in a significant increase in taxable real property for those facilities.

In an agreement to ease that tax burden, Proposition 2 amended the Constitution in 1993 to allow a tax exemption for the value of the mandatory pollution control equipment. However, Prop. 2 specified that the exemption would not be 100 percent if the equipment produced a marketable product to be sold for a profit. The value of the goods sold had to be deducted from the exemption. CSHB 1736 would by-pass Prop 2 by allowing these certain landfill-generated gas operations to get the 100 percent exemption for the pollution control equipment without having to deduct the profitable methane byproduct. These projects cannot compete against other forms of natural gas in the marketplace and are looking for special treatment.

The state should not provide tax breaks to projects that capture landfill gas for a profit because they often result in practices that create even more pollution, especially in the short run. Instead of diverting organic material into compost, these landfills benefit from putting as much organic material as possible into landfills and recirculating the liquid created in landfills to speed up the decay of organic material, creating more landfill gas and more pollution. Landfill gas includes the highly flammable and powerful greenhouse gas methane, as well as other components that can emit dangerous toxins when burned off to get a pipeline quality methane byproduct. While landfill gas may be a valuable fuel source, there are negative environmental consequences to incentivizing its increased production.

OTHER OPPONENTS

While limited to one year, exempting landfill-generated gas conversion facilities from ad valorem taxation would result in reduced taxable

SAY: property values and the related costs to local governmental entities and the Foundation School Fund would be increased.

The committee substitute made an effort to narrow the exemption to just a few projects that would be in existence at the time of enactment, but more facilities could come online within the timeframe specified in the bill. A local option that would let the cities and counties negotiate the exemption would be more appropriate. Productive property using pollution control equipment has never been exempt from taxation without the local option.

NOTES: According to the fiscal note, the one-year tax exemption created by the CHB 1736 would reduce taxable property values, and related costs to the Foundation School Fund would be increased through the operation of school finance formulas.

SUBJECT: Evaluating the performance of dropout recovery schools

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Dutton, Farney, Huberty, K. King, Ratliff, J. Rodriguez

0 nays

1 absent — Villarreal

WITNESSES: For — Ashlee Clark, Richard Marquez, and Leticia Medrano; Texans Can Academy; Monty Exter, The Association of Texas Professional Educators; Bill Hammond, Texas Association of Business; Parc Smith, American YouthWorks; (*Registered, but did not testify*: Ellen Arnold, Texas Association of Goodwills and Texas PTA; Chayanna Bell, Texans Can Academies; Portia Bosse, Texas State Teachers Association; Nan Clayton, League of Women Voters of Texas; David Dunn, Texas Charter Schools Association; Andrew Erben, Texas Institute for Education Reform; Eric Glenn, Texas Charter School Association; David Hung; Janna Lilly, Texas Council of Administrators of Special Education; Ken McCraw, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Don Rogers, Texas Rural Education Association; Julie Shields, Texas association of School Boards; Addie Smith, Texas Charter Management Organizations; Paula Trietsch Chaney; Chandra Villanueva, Center for Public Policy Priorities; Maria Whitsett, Texas School Alliance; Howell Wright, Texas Association of Mid Size Schools; Justin Yancy, Texas Business Leadership Council)

Against — None

On — (*Registered, but did not testify:* David Anderson, Texas Education Agency

BACKGROUND: Under the state accountability system, alternative education campuses have the option to be evaluated under alternative education accountability (AEA) procedures and receive accountability ratings based on different performance standards and indicators/measures than those used for regular campuses.

DIGEST:

CSHB 3808 would create a category of dropout-recovery schools and a method of evaluating those schools' performance.

The bill would designate certain school districts, campuses, and open-enrollment charter schools as dropout-recovery schools if more than half of their students were 17 and older, and the school was required to register under the AEA.

The education commissioner would adopt an alternative completion rate that compares the ratio of students who graduate, continue attending school into the next academic year, or receive a high school equivalency certificate to the total number of students in the same longitudinal cohort.

Students who had been expelled would be counted as graduates if they graduated or received a high school equivalency certificate.

A student's best score on state-mandated tests would be counted, whether it came from the primary administration or a retake in a school year.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3808 would allow the state education accountability system to more accurately measure dropout-recovery high schools by giving them credit for serving high-risk dropouts. While it is true that many traditional high schools also serve students who are at risk of dropping out, it would be fair to have a separate accountability provisions for schools that focus on dropout recovery and at which more than half are older than 17.

Texas cannot afford to ignore the thousands of students who drop out each year. On average, dropouts are more likely to be unemployed and earn less money when they eventually secure work. Two-thirds of inmates in the Texas prison system are high school dropouts.

Many of the students served by dropout-recovery schools are simply removed from the accountability system altogether. As a result, their ultimate accomplishment of staying in school and graduating is never counted as a success for that school. This flaw in the system puts the schools in danger of being labeled as unacceptable and potentially being

shut down merely because they serve the at-risk population they are intended to serve. Closing schools that serve dropouts literally shifts at-risk students from one to the next. Instead, the state should provide a stable, safe haven to help students graduate and be successful in life.

OPPONENTS SAY:

There is no doubt that dropout-recovery schools face a challenge in serving older students who may have been expelled. But if they are not up to the task, the state needs to shut them down and find another charter operator who could do a better job.

Many schools and charters that serve a smaller population of older dropouts face the same challenges but would not qualify for consideration under the bill's modified accountability provisions. These schools also deserve relief in the way they count graduates and student test scores.

SUBJECT: Life without parole for super aggravated sexual assault

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Toth

0 nays

2 present not voting — Burnam, Schaefer

WITNESSES: For — Brent King, Chelsea's Shield; Morgan Neustein; Columba Wilson; (*Registered, but did not testify*: Brent Connett, Texas Conservative Coalition; Lon Craft, Texas Municipal Police Association; Daniel Earnest, Jimmy Rodriguez , San Antonio Police Officers Association; MerryLynn Gerstenschlager, Texas Eagle Forum; Melinda Griffith, Combined Law Enforcement Associations of Texas; Ray Hunt, Houston Police Officers' Union; Dan Levey, National Organization of Parents of Murdered Children; Randle Meadows, Arlington Police Association; James Parnell, Dallas Police Association; Clay Taylor, Department of Public Safety Officers Association; Jennifer Tharp, Comal County Criminal District Attorney; Kristin Forburger; Andy Kahan)

Against — (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association)

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Under Penal Code sec. 22.021 aggravated sexual assault is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000). If the offense is committed in conjunction with any of several aggravating circumstances described in sec. 22.021 (a)(2)(A), the penalty is enhanced, and it is sometimes referred to as “super aggravated sexual assault.” The term applies to convictions for aggravated sexual assault if the victim was younger than six years old, or younger than 14 and the offense included certain factors, including serious bodily injury or the use of a weapon. A first offense for super aggravated sexual assault carries a minimum sentence of 25 years in prison and a maximum sentence of life, and offenders are not eligible for parole.

DIGEST:

CSHB 1748 would impose a penalty of life-without-parole for "super-aggravated sexual assault" committed by persons 18 years old or older. The bill would add victims 14, 15, and 16 years old who suffer serious bodily injury to the list of victims which can qualify an offense to be punished under the super-aggravated sexual assault provisions relating to defendants 18 years old or older.

The penalty for "super-aggravated sexual assault" would remain 25 years minimum in prison with a maximum sentence of life in prison if the defendant was younger than 18 years old.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 1748 would impose life-without-parole on adult offenders who commit the heinous crime of super aggravated sexual assault to make the punishment more appropriately fit the crimes and to better protect the public. The crime of super aggravated sexual assault involves a violent, sexual crime against a child with aggravating factors and deserves the most serious punishment available.

The need for the change is illustrated by the crime committed against Chelsea King, a 17-year old who was brutally attacked, raped, and murdered by a man out on parole after serving only a handful of years for another rape of a child.

CSHB 1748 would impose a "one-strike" rule on this worst-of-the-worst offender so that no child would become the second victim of this type of violent criminal. Under current law, these violent sex offenders could serve out their sentences and be released into the community. This means that, for example, a 15-year old victim could see her offender released to society with no supervision.

Punishing these crimes with life without parole would align them with the list of current crimes, such as repeat convictions for continuous sexual abuse of a child, that carry this punishment. The law would not be unprecedented as there are many laws in Texas and other states that impose stronger penalties when children are the victim of violent crimes. The bill is crafted to meet the requirements in a U.S. Supreme Court decision that defendants receiving life without parole be 18 years old or

older. Punishments for offenders younger than 18 would remain as they are under current law.

Prosecutors would retain discretion to handle these cases appropriately and would have options to use plea agreements when advisable. For example, prosecutors could proceed with standard aggravated sexual assault that would not carry life-without-parole.

Although the fiscal note states that the impact of the bill is indeterminate, any use of state resources to handle this population of offenders would be warranted given the crime they would have committed and the public danger they represent.

OPPONENTS SAY:

Current law works adequately to punish these offenders with sentences of life or 25 to 99 years in prison, and offenders are not eligible for parole. Adding more offenses to those eligible for life without parole could distort the relationship among offenses. As the number of crimes that carry life-without-parole increases, it can become irresistible to continue to add new offenses.

With a mandatory life without parole, it could be difficult to reach an agreement for a guilty plea in these cases, if prosecutors thought a plea agreement was advisable. In some cases, young, traumatized victims and their families may prefer to use a plea agreement to avoid a trial.

SUBJECT: Disconnection notices at certain multifamily housing properties

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez, Sanford

0 nays

1 absent — Anchia

WITNESSES: For — Mike Bass, City of Arlington; David Mintz, Texas Apartment Association; Simone Nichols-Segers, National Multiple Sclerosis Society; Chris Parks, Legal Aid of Northwest Texas; Emily Rickers, Alliance for Texas Families; (*Registered, but did not testify*: Eric Craven, Texas Electric Cooperatives; David Crow, Arlington Professional Fire Fighters Association; Randle Meadows, Arlington Police Association; Tyler Rudd, West Texas Gas; Katherine Stark, Austin Tenants Council)

Against — None

On — Walt Baum, Association of Electric Companies of Texas Inc.

DIGEST: CSHB 1772 would provide for notification of the impending disconnection of electric or natural gas utilities to residents of nonsubmetered master-metered multifamily housing properties. It would also provide that cities be notified of the disconnections.

Definitions. CSHB 1772 would define a "customer" as a person who is responsible for bills received for electric utility service or gas utility service provided to nonsubmetered master metered multifamily property.

"Nonsubmetered master-metered multifamily property" would mean an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive electric utility service or gas utility service that is master metered but not submetered.

Customer notice to tenants. CSHB 1172 would require a customer to provide written notice of a service disconnection to each tenant or owner at a property not later than the fifth day after the date the customer

received a notice of service disconnection from an electric service provider or a gas utility.

The customer would be required to provide notice by mail to the tenant's or owner's preferred mailing address or hand deliver the notice to the tenant or owner. The written notice would have to include the customer's contact information and the tenant's remedies under the Property Code.

The notice would be required to be in both English and Spanish and contain the following language: *"Notice to residents of (name and address of nonsubmetered master metered multifamily property): Electric (or gas) service to this property is scheduled for disconnection on (date) because (reason for disconnection)."*

Customer notice to cities. The customer would be required to provide the same notice to the governing body of a city by certified mail if the property was located within a city. CSHB 2712 would allow a city to provide additional notice to the property's tenants and owners after receipt of the service disconnection notice under this subsection.

Other customer notice provisions. The customer would not be required to send notices to tenants, owners, or cities if a customer avoided the disconnection by paying the bill.

Notice to cities from electric utilities. CSHB 1772 would require a retail electric provider or vertically integrated electric utility in an area where customer choice had not been introduced to send a written notice of the service disconnection to a city before the electric provider disconnects service to a property for nonpayment under certain conditions. CSHB 1772 would require that the property be located in the city and the city established an authorized representative to receive notice. The electric utility would have to send the notice not later than the 10th day before the date electric service was scheduled for disconnection. The notice requirement would not apply to a city-owned utility or an electric cooperative.

The Public Utility Commission would be required by rule to adopt a mechanism by which a city could provide the city's contact information to the commission for the purposes of receiving notice from the electric utility. The contact information would be available to the public.

Notice to cities from gas utilities. The bill would require gas utilities, except city-owned gas utilities or gas utilities owned by electric cooperatives, to provide notice in the same manner as that described previously for electric utilities.

The Railroad Commission would be required by rule to adopt a mechanism by which a city could provide the city's contact information to the commission for the purposes of receiving notice from the gas utility. The contact information would be available to the public.

Additional safeguards. The provisions of CSHB 1772 would be in addition to the safeguards provided by other laws or agency rules. CSHB 1772 would not prohibit a city, the Public Utility Commission, or the Railroad Commission from adopting customer safeguards that exceeded the safeguards provided in the bill.

Effective dates. CSHB 1772 would apply only to the disconnection of service for nonpayment of a utility bill issued for a billing period that began on or after the bill's effective date.

CSHB 1772 would take effect September 1, 2013.

SUBJECT: Unemployment compensation eligibility for victims of sexual assault

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 7 ayes — J. Davis, Y. Davis, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

2 absent — Vo, Bell

WITNESSES: For — Rick Levy, Texas AFL-CIO; Glenn Stockard, TAASA; (*Registered, but did not testify*: Eileen Garcia, Texans Care for Children)

Against — (*Registered, but did not testify*: Kathy Barber, NFIB Texas)

On — Steve Riley, Texas Workforce Commission

BACKGROUND: Labor Code, ch. 204 governs the Texas unemployment compensation contribution system. Under sec. 204.021, benefits paid to a claimant are charged to the account of the claimant's former employer. An employer's unemployment compensation rate is calculated based on the history of unemployment claims against the employer. Benefits paid to a claimant are counted as "chargebacks" against the employer's account. An employer's premiums rise if a former employee receives benefits from the unemployment compensation fund. A claim filed against an employer remains on the employer's account for three years.

Sec. 204.022(a) allows employers to be exempted from the chargeback system when a former employee claims unemployment benefits. This may occur in specified situations, one of which is when an employee leaves the employer to seek protection against family violence or stalking. Chargebacks are not posted on those employers' accounts. Added costs of providing unemployment benefits to these claimants is paid by all contributors to the unemployment insurance system.

When a chargeback is not posted to an employer's account due to a family violence or stalking situation, evidence demonstrating the need for the

employee's leaving must be provided in one of three forms:

- a recently issued protective order documenting the family violence or stalking of the employee;
- a police record documenting the family violence or stalking; or
- medical documentation describing the family violence, which identifies the employee as the patient and has to do with treatment the patient received.

Sec. 207.046 states that an individual is not disqualified from receiving unemployment compensation benefits in certain instances of voluntary separation due to a compelling need. One qualifying situation is when an employee leaves to seek protection against family violence or stalking. Any of the documentation listed above may be used as evidence for the need.

DIGEST:

CSHB 26 would amend Government Code, sec. 204.022 to add that an employee's departure due to the need of the employee or an immediate family member for protection against violence related to sexual assault would not be charged to the account of the employer. Evidence of the sexual assault could be provided in the form of a protective order, police record, physician's statement, or written description from a family violence center documenting the sexual assault.

The bill would add protection against sexual assault for the employee or an immediate family member to the list of criteria under which an individual would not lose unemployment compensation after involuntary separation from an employer, as evidenced by the same forms of documentation used to justify a chargeback exemption.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013. The bill would only apply to unemployment compensation claims filed with the Texas Workforce Commission on or after the effective date.

SUPPORTERS SAY:

CSHB 26 would protect people victimized by sexual assault who were forced to quit voluntarily, while also not penalizing their employers. The purpose of unemployment compensation insurance is to provide a cushion to individuals who lose their job through no fault of their own. Sexual assault is certainly a crime people do not wish on themselves. Many

sexual assault victims end up losing their jobs or being forced to quit for many reasons, which might include having the perpetrator as a coworker or due to anxiety, fear, or embarrassment associated with the crime.

Texas already has made the decision to grant unemployment benefits to victims of domestic violence. With this being the case, the equal if not more serious situation of sexual assault should be included, as well. Nine other states offer this form of compensation, and there would be no significant fiscal impact to the state. Employers would not receive chargebacks to their accounts, as the cost to the Unemployment Compensation Trust Fund would be socialized. For the replenishment of tax paid by all employers to go up 0.1 percent, $4.5 million in new claims would have to result from claims made by sexual assault victims. The projected total claims of $70,000 per year by these victims falls well below this threshold.

OPPONENTS SAY:

Employers pay into the Unemployment Trust Fund so that when they lay off employees, those employees can receive unemployment benefits. There are already a number of allowances, ranging from family violence situations to disability, where former employees can access these benefits. However, these allowances are unrelated to work. By including victims of sexual assault, the bill would add yet another allowance unrelated to work.

Over time, if the state continues expanding the number of these allowances, the unemployment insurance taxes for employers will go up. Employers want the funds in the trust fund to go toward the intended purpose— namely, providing benefits to employees laid off from work.

SUBJECT: Requiring reports of patient deaths from surgical site infections

COMMITTEE: Public Health — favorable, without amendment

VOTE: 9 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield

0 nays

2 absent — Coleman, Zedler

WITNESSES: For — Elizabeth Sjoberg, Texas Hospital Association; (*Registered, but did not testify*: Carlos Higgins, Texas Silver-Haired Legislature)

Against — None

On — Ron Gernsbacher, Department of State Health Services

BACKGROUND: Health and Safety Code, sec. 98.103 requires a health-care facility to report to the Department of State Health Services (department) surgical-site infections following certain medical procedures.

DIGEST: HB 3285 would require a health-care facility to report whether the surgical-site infection resulted in the death of the patient. The department would need to summarize this information and make it publicly available.

As soon as practicable after the effective date, the executive commissioner of the Health and Human Services Commission would need to adopt rules to implement these changes. The bill would apply to reports and departmental summaries made on or after March 1, 2014.

This bill would take effect September 1, 2013.

SUPPORTERS SAY: HB 3285 would enhance transparency by requiring health care facilities to report patient deaths following surgical site infections. This would make the department's data collection more complete and help the public make more informed health-care decisions.

OPPONENTS SAY:

HB 3285 should specify that health-care facilities only would be required to report infection-related deaths that occurred while the patient was still in the hospital. As written, the bill could significantly burden health-care facilities by requiring them to track a patient long after the patient had been discharged.

NOTES:

The bill's author intends to offer a floor amendment that would specifically address the opponent's concerns.

SUBJECT: Search warrants issued in Texas and other states for certain electronic data

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Carter, Burnam, Hughes, Schaefer, Toth

0 nays

2 absent — Leach, Moody

1 present, not voting — Canales

WITNESSES: For — Lori Burks, Tarrant County District Attorney's Office; Anne Olson, Texas Baptist Christian Life Commission; (*Registered, but did not testify:* Jessica Anderson, Houston Police Department; David Boatright, National Center for Missing and Exploited Children; Lon Craft, Texas Municipal Police Association; Robert Flores, Texas Association of Mexican-American Chambers of Commerce; Clifford Herberg, Bexar County Criminal District Attorney's Office; Jason Sabo, Children at Risk; Ballard C. Shapleigh, District Attorney 34th Judicial District; Gary Tittle, Dallas Police Department; Ana Yanez Correa, Texas Criminal Justice Coalition)

Against — Chris Howe

On — Scott McCollough, Data Foundry; (*Registered, but did not testify:* Andy MacFarlane, Data Foundry)

BACKGROUND: Code of Criminal Procedure, ch. 18 governs search warrants. Art. 18.02 enumerates property, information, and other items for which a search warrant may be issued.

Art. 18.06 and art. 18.07 govern the time within which a warrant must be executed. Unless a warrant is issued solely for specimens for DNA analysis, it must be executed within three days.

Art. 18.20 governs detection, interception, and use of wire, oral, or electronic communications. It defines "electronic storage" as:

- a temporary, intermediate storage of a wire or electronic communication that is incidental to the electronic transmission of the communication; or
- storage of a wire or electronic communication by an electronic communications service for purposes of backup protection of the communication.

Art. 18.21, sec. 4, governs the procedures for a peace officer to require disclosure of a stored wire communication or electronic communication, including circumstances in which a warrant is required. Art. 18.21, sec. 4(d) governs requirements for a peace officer to require disclosure of records or other information pertaining to a subscriber or customer of a remote computing service.

DIGEST:

CSHB 2268 would allow search warrants for certain electronic data to be issued in Texas and executed in other states. It would define terms, provide procedures and standards for these search warrants, and allow for state reciprocity of similar warrants issued in other states.

Definitions. The bill would define terms relating to electronic communication and customer data.

The current definition of "electronic storage" would be replaced with a new definition. Under the bill, "electronic storage" would mean any storage of electronic customer data in a computer, computer network, or computer system, regardless of whether the data was subject to recall, further manipulation, deletion, or transmission and would include any storage of a wire or electronic communication by an electronic communications service or a remote computing service.

"Electronic customer data" would mean data or records that were acquired by or stored with the provider of an electronic communications service or a remote computing service and contained:

- information revealing the identity of customers of the applicable service;
- information about a customer's use of the applicable service;
- information that identified the recipient or destination of a wire communication or electronic communication sent to or by the customer;
- the content of a wire communication or electronic communication

sent to or by the customer; and
- any data stored by or on behalf of the customer with the applicable service provider.

Search warrants for stored customer data or communications. CSHB 2268 would amend the list of items for which a search warrant could be issued under Code of Criminal Procedure, art. 18.21 to add electronic customer data held in electronic storage, including the contents of records and other information related to a wire communication or electronic communication held in electronic storage.

The bill would add Code of Criminal Procedure, art. 18.21, sec. 5A and sec. 5B to govern the issuance of warrants for stored customer data or communications.

Warrants issued in Texas. Sec. 5A would govern warrants for stored customer data or communications issued in Texas.

Under sec. 5A a district judge would be able to issue a search warrant for electronic customer data held in electronic storage. The warrant could be issued regardless of whether the customer data was held at a location in Texas or in another state. The warrant could only be served on an electronic communications provider or a remote computing service provider that was a domestic entity or was doing business in this state under a contract or a terms-of-service agreement with a resident of Texas if any part of that contract or agreement were performed in Texas.

A warrant under sec. 5A would be served when the authorized peace officer delivered the warrant by hand, by fax, or, in a manner allowing proof of delivery by U.S. mail or private delivery service. The warrant would need to be served on a person designated or allowed by law to receive process for the entity.

A warrant under sec. 5A would need to be executed not later than the 11th day after the date of issuance unless the judge issuing the warrant directed a shorter period within the warrant. A warrant under sec. 5A would be considered executed when proper service was completed. The bill would amend arts. 18.06 and 18.07 to reflect the 11-day time limit for a warrant issued under sec. 5A.

The service provider receiving the warrant would be required to produce

all electronic customer data, contents of communications, and other information sought, regardless of where the information was held. Any officer, director, or owner of an entity who was responsible for the failure of the entity to comply with the warrant could be held in contempt of court. Failure of an entity to timely deliver the information sought would not affect the admissibility of that evidence in a criminal proceeding.

An entity upon which a warrant under 5A was served would have until the 15th business day after the date the warrant was served to comply, with certain exceptions:

- the deadline for a warrant served on the secretary of state as the agent of the entity would be the 30th day after the date the warrant was served; and
- the judge issuing the warrant could indicate an earlier compliance date in certain circumstances where failure to comply by the earlier deadline would cause serious jeopardy to an investigation or create certain risks.

The service provider would be required to verify the authenticity of the information produced by including an affidavit given by a person qualified to attest to its authenticity. The affidavit would have to state that the information was stored in the course of regularly conducted business of the provider and specify whether it was the regular practice of the provider to store that information.

A motion to quash filed by a service provider would need to be heard and decided by the judge issuing the warrant not later than the fifth business day after the date the motion was filed. This hearing could be conducted by teleconference.

Uniformity within ch. 18. The bill would ensure that references to warrants affected by this bill were updated and that sec. 5A mirrored several of the major provisions for search warrants throughout Code of Criminal Procedure, ch. 18.

The sworn affidavit required under art. 18.01(b) would be required for a warrant issued under sec. 5A and would need to establish probable cause that a specific offense had been committed and that the electronic customer data sought:

- constituted evidence of that offense or evidence that a particular person committed that offense; and
- was held in electronic storage by the service provider on which the warrant was served.

Other provisions similar to those elsewhere in ch. 18 would include:

- that an application for a warrant made under sec. 5A would need to demonstrate probable cause;
- that only the electronic customer data described in the sworn affidavit could be seized under the warrant;
- that the sworn affidavit could be sealed pursuant to art. 18.011;
- that a peace officer would need to file a return of the warrant and a copy of the inventory pursuant to art. 18.10; and
- that the warrant would run in the name of "The State of Texas"

The bill would specify that warrants required under Art. 18.21, sec. 4, would be warrants under sec. 5A. It would amend Art. 18.21, sec. 4(d) to apply to a provider of an electronic communications service or a remote computing service and only to disclosure of electronic customer data and not information pertaining to a subscriber.

Reciprocity. Under sec. 5B, a domestic entity that provided electronic communications services or remote computing services would be required to comply with a warrant issued in another state in a manner equivalent to the requirements under sec. 5A.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2268 would simplify a needlessly complex process and keep Texas law enforcement in charge of Texas prosecutions. Currently, if an officer needs a search warrant for electronic data from a California company for someone in Texas, the officer has to create an affidavit and submit it to a California peace officer. The California peace officer must then create another affidavit and submit it to a California judge who will have discretion over whether to issue a search warrant. If the warrant is issued, California law enforcement must execute the warrant, collect the requested information, and then return it to Texas law enforcement. This process

could be simplified by allowing Texas judges and law enforcement to issue and execute warrants for certain electronic information held in other states. The entities upon which these warrants are commonly served have processes in place to streamline compliance and production of evidence. CSHB 2268 would expedite the investigation of Texas crimes and give Texas prosecutors the tools they need to successfully and timely prosecute these crimes, while alleviating the burden on courts in other states, and simplifying the process for the entities receiving these warrants.

The bill would allow Texas law enforcement to successfully investigate and prosecute criminals who engage in heinous crimes such as human trafficking and child sex exploitation. The Internet is the primary venue for traffickers to buy and sell women and children in the United States. The bulk of criminal activity and evidence in these crimes take place online, and the evidence may be held on a server or by a company housed in another state. It is often difficult in these cases to gather sufficient evidence because of the complex search warrant procedures, and some cases have to go forward without corroborating evidence because the evidence cannot be obtained in a timely manner. The bill would streamline these search warrants, allowing the state to be more successful in investigating and punishing trafficking crimes.

The bill would allow reciprocity only to the extent necessary for the bill to be effective. In order for Texas judges and law enforcement to use the tools provided by this bill, it would be necessary to grant the same ability to judges and law enforcement in other states who encounter the same problem. The reciprocity in the bill would be narrowly granted to apply only to warrants equivalent to those defined under the bill.

OPPONENTS SAY:

CSHB 2268 would allow judges who should have no jurisdiction in Texas to exercise judicial power within the state. The bill would allow for state reciprocity of warrants, meaning that Texas entities would be required to comply with warrants issued in another state. The judges whose warrants would be honored under this bill were not elected by Texans and should not have jurisdiction to issue warrants and enforce compliance within the state.

SUBJECT: Funding projects to address homelessness, mental illness, substance abuse

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — Kolkhorst, Naishtat, Coleman, Collier, Cortez, S. Davis, Guerra

4 nays — S. King, Laubenberg, J.D. Sheffield, Zedler

WITNESSES: For — Jay Dunn, The Bridge; Lee Johnson, Texas Council of Community Centers; Gyl Switzer, Mental Health America of Texas; (*Registered, but did not testify*: Randy Cain, City of Dallas; Melody Chatelle, United Ways of Texas; Mindy Ellmer, Haven for Hope; Laurie Glaze, One Voice Texas; Marilyn Hartman; Cynthia Humphrey, Association of Substance Abuse Programs; Kathryn Lewis, Disability Rights Texas; Katharine Ligon, Center for Public Policy Priorities; Susan Milam, National Association of Social Workers – Texas Chapter; TJ Patterson, City of Fort Worth; Michelle Romero, Texas Medical Association; Josette Saxton, Texans Care for Children; Jim Short, Harris County; Andrea Usanga, Mental Health America of Greater Houston; Eric Woomer, Federation of Texas Psychiatry)

Against — None

On — (*Registered, but did not testify*: Lauren Lacefield Lewis, DSHS)

DIGEST: CSHB 2887 would require the Department of State Health Services to fund collaborative community projects that address homelessness, mental illness, and substance abuse.

Grants. If appropriated funds for this purpose, the department would have to make grants to community organizations and local entities, among others, to establish or expand collaborative community projects. These projects would bring together the public and private sectors to provide services and care to individuals affected by homelessness, mental illness, and substance abuse. A department's grant could not be more $7.5 million and would need to be matched by a private funding source.

Acceptable projects. An entity would have to use the department's grant and private funding to establish or expand a collaborative community

project, and the project would need to be self-sustaining within seven years. Acceptable uses for the money would include infrastructure development, start-up costs, service provider operations, and the provision of services, among others.

If appropriate, an entity would have to utilize the department's Texas Electronic Registrar, transportation plans, and case managers. An entity would need to consider mentoring and volunteering opportunities, ways to help homeless youths, families and the recently incarcerated, and services for veterans. The entity would also have to consider ways for the targeted populations to help with the planning, governance, and oversight of the project. Ultimately, the projects would need to focus on successfully integrating individuals into the community.

Outcome measures. Each entity that received a grant would need to pick four outcome measures on which to focus through the implementation and operation of the project. The bill would specify seven possible outcome measures, primarily involving employment, housing, and decreased utilization of state services. A department could approve other outcome measures that addressed specific community needs.

Rules and review. The department would have to contract with a third party to assess whether a project is achieving the selected outcome measures. The department would need to develop procedures to reduce or terminate funding if a project is not achieving its outcome measures or is not self-sustaining after seven years. If this happened, the department would have to competitively redistribute the funds to high-performing projects. The executive commissioner of the Health and Human Services Commission would need to establish any rules needed to implement the grant program.

This bill would take effect on September 1, 2013.

SUPPORTERS SAY:

CSHB 2887 would help break the cycle of homelessness, mental illness, and substance abuse by requiring the public and private sector to coordinate care. Without the proper the community services and supports, too many individuals will continue to struggle with these issues. The bill would provide funds and flexibility, allowing a local entity to develop a project that effectively addressed their community's unique needs.

Although opponents are concerned about the cost of the bill, there is

evidence that these projects could actually produce long-term cost savings to the state by reducing expensive incarcerations and hospitalizations. Further, these projects would require a private funding source, which also would reduce the cost to the state.

OPPONENTS SAY:

CSHB 2887 would not be financially prudent. These projects aim to serve a worthy cause, but would cost the state too much money.

NOTES:

CSHB 2887 would have a negative fiscal impact of $25.5 million through fiscal year 2015, primarily to fund grants to local entities.

SUBJECT: Responsibilities following certain accidents, imposing criminal penalties

COMMITTEE: Transportation — committee substitute recommended

VOTE: 11 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Pickett, Riddle

0 nays

WITNESSES: For — David Courreges; Bart Griffin; *(Registered, but did not testify:* Bill Lewis, Mothers Against Drunk Driving)

Against — None

On — *(Registered, but did not testify:* Ron Joy, Texas Department of Public Safety)

BACKGROUND: Transportation Code, sec. 550.021 directs drivers involved in an accident resulting in injury or death to immediately stop or return to the scene of the accident and remain at the scene until they have discharged their duties to:

- provide identifying and insurer information to other parties in the accident; and
- provide reasonable assistance, including arranging for transportation to medical treatment if necessary or upon request.

If the accident results in serious bodily injury or death, then failure to remain at the scene, provide information, or render aid is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

Under Penal Code, sec. 49.08 a person commits the offense of intoxication manslaughter if that person, as a result of intoxication, kills someone by accident or mistake while:

- operating a motor vehicle in a public place;
- operating an aircraft or watercraft; or
- operating or assembling an amusement ride.

This offense is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000).

DIGEST:

CSHB 3668 would amend the Transportation Code, sec. 550.021(a) to require a driver involved in an accident that could possibly result in an injury or death to stop and determine whether a person was involved and whether that person required aid. The bill also would require a driver in such an accident involving another person to render aid if necessary and provide information.

Failure to determine whether a person was involved in the accident, whether they require aid, and to remain at the scene and render aid if necessary would result in a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000).

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 3668 would help save the lives of people seriously injured in an auto accident, eliminate the incentive for a drunk driver to leave the scene of a collision, and increase the responsibilities drivers have toward others when using Texas' roadways.

Currently, there is a loophole in Texas' stop and render law that requires the state to prove that a driver who left the scene of an accident did so knowing that another person was involved. This bill would make that issue irrelevant and require a driver in an accident to remain at the scene so they could determine whether another person was involved and whether that person is injured so they can send for medical help. The provision would eliminate the kind of excuses that are growing common among alleged drunk drivers. If they flee an accident and sober up, they face a lesser charge by claiming that they thought they had merely struck an animal or inanimate object — not another person. This bill would require that they verify the seriousness of the accident. It also would mitigate the harm caused by hit-and-run accidents and reduce the time it takes to treat someone who is severely injured.

The bill would not place an unreasonable amount of responsibility on a driver; it merely asks a motorist to do what is right, immediately determine whether another person was injured and get them the aid they deserve. These simple but necessary requirements would not cost the state any money to implement nor would they result in a rash of arrests and flood our jails.

OPPONENTS SAY:

CSHB 3668 would place a driver in an unfair position of having to evaluate the potential for injury or death during a moment of crisis that could cloud anyone's judgment. Even in a case in which a driver meets all of the requirements in the bill and ascertains the condition of every person involved in the accident and receives an acknowledgement that everyone present is fine, which later proves wrong, the driver's actions and account could be impugned without a proper witness.

SUBJECT: Local government entities' non-enforcement of federal firearm laws

COMMITTEE: Federalism and Fiscal Responsibility, Select — committee substitute recommended

VOTE: 3 ayes — Creighton, Burkett, Scott Turner

1 nay — Walle

1 absent — Lucio

WITNESSES: For — Jeremy Blosser, Tarrant County Republican Party; Tom Glass, Libertarian Party of Texas; Mont Goodell; John Harrington; Read King; Ryan Lambert; Mario Loyola, Texas Public Policy Foundation; Rachel Malone, Texas Firearms Freedom; (*Registered, but did not testify*: Ian Armstrong; Judith Fox; Joann Galich; Bob Green; Paul Hastings; John Horton, Young Conservatives of Texas; Chris Howe; Brandon Moore; Marlene Parlak; Tim Parlak; Marissa Patton, Texas and Southwestern Cattle Raisers Association; Slow Pokey, Trailerparkshow.com; Robert Ritchey; Michelle Smith; Alice Tripp, Texas State Rifle Association; Terri Williams, Texas Motorcycle Rights Association)

Against — (*Registered, but did not testify*: Charley Wilkison, Combined Law Enforcement Associations of Texas)

DIGEST: CSHB 928 would prohibit a state agency or political subdivision from providing assistance to federal officials in the enforcement of federal laws or rules regulating firearms or items related to firearms. The prohibition would apply when the federal restriction was not also in state law.

A political subdivision of the state that required the enforcement of a federal restriction on firearms not also in state law would be prevented from receiving state grant funds. This restriction on grant funds would occur in the fiscal year following the year in which a final judicial determination under this law was made.

A citizen living within a political subdivision following a federal restriction could file a complaint with the attorney general and would have to include evidence supporting the claim. The attorney general could then

seek enforcement of this Penal Code section in Travis County district court or in the county of the political subdivision in question. Attorney fees and costs for enforcing this section could be recovered.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 928 would reflect a new cooperative framework between state and federal government. Where the laws converge, the state law enforcement would continue to use its resources to assist federal law enforcement. But where state law did not mirror federal law, it would be up to the federal government to enforce those laws. There are other areas where there is room for this relationship, whether the issue is firearms restrictions or something else. Texas should lead on this issue and be the first state to enact a law like this.

What the bill proposes is constitutional and comes directly from U.S. Supreme Court precedent. In *Prince v. United States*, the Supreme Court considered a case where the federal government was trying to force firearm background checks with federal regulations upon the states. *Prince* established the constitutional framework that the federal government cannot force the state to do something but can incent the state or use other means. In line with this ruling, state officials should not be required to enforce a policy not in line with the preferences of its residents.

As an enforcement mechanism, the bill would provide penalties if political subdivisions sought to require enforcement of a federal gun restriction. In dealing with this Second Amendment issue, there would be no attempt to subject police officers to criminal penalties. Rather, the bill's enforcement provision would be for local government entities to lose state grant monies for the next year.

The bill would not create confusion for police officers in Texas. It only would apply if a political subdivision were to require its rank and file officers to enforce a federal firearm restriction not in line with state law.

Additionally, HB 928 addresses state resources regarding state conduct. It would say nothing about federal law. The bill would only assert that where state and federal law do not agree, state law would instruct state law enforcement resources. Federal agencies would continue to conduct their

own operations as the federal government instructed them.

OPPONENTS SAY:

HB 928 could put rank-and-file police officers in the middle of the contentious debate over federal authority and states' rights with regard to gun regulation. The bill would create confusion about which laws to enforce and could end up creating a situation in which Texas police officers would be in violation of the law while honestly attempting to enforce it. The penalty for violating Texas law could ultimately lead to disciplinary action or termination. Passing this bill would not be the right way to address the question of whether Texas would have to enforce a federal law its residents did not like.

The bill is unconstitutional, ineffectual, and violates the basic legal concept of supremacy. The attempt to nullify federal law with state law would ultimately not stand up under scrutiny and would therefore not have any legal authority. Passing the bill simply would be symbolic gesturing and not a constructive way to find a sensible and legal balance between federal and state gun laws.

NOTES:

A similar bill, HB 1076 by Toth, is on today's House General State Calendar.

SUBJECT: Changes to the Texas Emerging Technology Fund

COMMITTEE: Economic and Small Business Development — committee substitute recommended

VOTE: 7 ayes — J. Davis, Vo, Isaac, Murphy, Perez, Rodriguez, Workman

0 nays

2 absent — Bell, Y. Davis

WITNESSES: For — (*Registered, but did not testify*: Cathy Dewitt, Texas Association of Business)

Against — None

On — Patrick Boswell, Office of the Governor; Terry Hazell, Emerging Technology Fund Advisory

BACKGROUND: Government Code, ch. 490 establishes the Texas Emerging Technology Fund to provide awards to participants in certain technology industries. The advisory committee for the fund is made up of 17 appointed members. The lieutenant governor and the speaker of the House each make two appointments. The governor appoints the other 13 members based on nominations from elected leaders, higher education institutions, and others.

Under subchapter D, awards are made to entities collaborating with research institutions on emerging technology projects. To make a subchapter D award, the fund's advisory committee must submit a recommendation on a proposed award to the governor, lieutenant governor, and speaker of the House.

Sec. 490.152 calls for the creation of centers of innovation and commercialization in various parts of the state to help foster research and development.

DIGEST: CSHB 3162 would make changes to the Texas Emerging Technology Fund's advisory board, alter the approval process for making awards, and

create a fund manager position.

Fund board. The bill would change the name of the fund's advisory committee to the Texas Emerging Technology Fund Board. The board would be composed of 15 members. The governor, lieutenant governor, and speaker of the House of Representatives each would make five appointments to the board. Members of the board would not be compensated.

Approval process. Under the bill, regional centers of innovation and commercialization would have to make recommendations to the governor and board regarding recommended recipients of awards. In making a subchapter D award, the final decision would be made by the board, without need for approval from the governor, lieutenant governor, and speaker. For the governor to make a subchapter D award of money from the fund, prior approval of the board would be required. The bill would specifically provide for the kinds of research entities eligible for subchapter D awards.

Fund manager. The bill would create a fund manager, designated by the board, to manage the investments received by the governor in consideration of awards made. The fund manager would perform duties set forth by the board.

Other provisions. The bill would add to the required provisions in the governor's annual report to elected leaders a description of the types of securities the governor, on behalf of the state, has taken in companies that have received an award. The bill would change the reporting of the number of jobs created by each project to increments of 10.

The board would hold four regular meetings per year and would be allowed to use videoconferencing and other technologies subject to certain notice requirements. The bill would allow for closed meetings to consider matters such as testimony from an entity that would involve discussion of confidential information. Members of the advisory board appointed prior to the bill's effective date would serve until September 1, 2013.

The bill would take effect on September 1, 2013.

SUBJECT: Covering mammograms by providers other than primary care physicians

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Eiland, G. Bonnen, Muñoz, Sheets, Taylor, C. Turner

1 nay — Creighton

1 absent — Morrison

WITNESSES: For — Sylvana Alonzo; (*Registered, but did not testify:* Sandra Martinez, Methodist Healthcare Ministries of South Texas)

Against — (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Business)

On — (*Registered, but did not testify:* Doug Danzeiser, Texas Department of Insurance)

DIGEST: HB 170 would require a health benefit plan that provided coverage for low-dose mammography to allow an enrollee to receive a covered mammogram performed by a provider other than the enrollee's primary care physician. Health benefit plans could require that an enrollee receive prior approval before doing so.

HB 170's provisions would extend to plans issued by health maintenance organizations. The bill would not affect the authority of a health benefit plan issuer to establish selection criteria for its providers.

HB 170 would take effect September 1, 2013, and its provisions would apply to health benefit plans issued or renewed on or after January 1, 2014.

SUPPORTERS SAY: HB 170 would increase the early detection of breast cancer. Many women must wait days, weeks, or even months until their primary care physician is available before receiving a mammogram covered by insurance. This is particularly distressing when a lump has been detected. HB 170 would allow women whose insurance covers mammograms to receive a covered screening more quickly and conveniently.

Because HB 170 would apply only to health benefit plans that cover mammography, it would not be a new insurance mandate. The bill simply would allow individuals to access coverage they had previously purchased.

OPPONENTS SAY:

HB 170 would expand government's involvement in the health care market. Although the bill would not be a new mandate, it would enlarge a current one. Health care costs are one of the largest and fastest-growing expenses individuals and businesses face. By increasing health care utilization, the bill would raise insurance premiums and cause more individuals and companies to drop their coverage.

The bill also would be poorly timed. Due to the federal Patient Protection and Affordable Care Act of 2010, the health care system is currently undergoing its biggest changes in decades. Enacting a new regulation now would increase uncertainty and should be considered only after the health insurance market has stabilized.

SUBJECT: Capping the combined hotel occupancy tax rate

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Ritter, Strama

0 nays

1 absent — Martinez Fischer

WITNESSES: For — (*Registered, but did not testify*: Roxana Gonzalez; Bill Hammond, Texas Association of Business; Ron Hinkle, Texas Travel Industry Association; Michelle Jones; Scott Joslove, Texas Hotel and Lodging Association; Annie Mahoney, Texas Conservative Coalition; Nayana Nancy Patel; Paul Patel; Vinod Patel)

Against — None

BACKGROUND: Local Government Code, ch. 344 and 345 allow counties, municipalities, and venue districts to impose a hotel-motel occupancy tax to fund the development of a venue project after receiving approval from voters. A venue is an arena, convention center, municipal park, recreation system or other facility as defined by sec. 334.001. The state, counties, and municipalities currently may impose a hotel occupancy tax.

DIGEST: HB 1908 would prohibit a municipality or county from proposing a hotel-motel occupancy tax rate that would cause the combined hotel-motel occupancy tax rate imposed by all sources to exceed 17 percent of the price paid for hotel room. The bill would require propositions that increased the occupancy tax for venue projects to include what the maximum combined occupancy tax rate imposed from all sources would be in the ballot language. The bill also would change the definition of convention center under the venue definition to use convention center facility as defined by the Tax Code.

HB 1908 would take effect September 1, 2013.

SUPPORTERS SAY:

Texas hotel-motel occupancy tax rates are some of the highest in the country. After the state, city, and county impose their taxes, visitors end up paying 13 percent, 15 percent, and even 17 percent more when staying at a hotel or motel in Texas. This substantially increases hotel prices for visitors and harms the state's ability to compete for convention and tourism business. HB 1908 would cap all combined hotel-motel occupancy tax rates at 17 percent. Without this cap, Texas could see hotel tax rates reach 19 percent or more. This bill still would allow for flexibility in setting hotel-motel occupancy tax rates but would provide a reasonable cap to keep Texas competitive. In addition, HB 1908 would require the ballot language for certain hotel occupancy tax elections to declare what the combined hotel-motel tax rate would be if voters approved the proposition. This language would inform voters about the actual tax hotel and motel customers pay before voting. HB 1908 would maintain flexibility for municipalities and counties but ensure that Texas maintained competitiveness in the tourism and convention business.

OPPONENTS SAY:

HB 1908 would limit the authority of Texas municipalities and counties to increase their own lodging occupancy tax rates. Current law already sets caps for each county and municipality's occupancy tax, so there is no need to artificially cap their combined tax rate. Because current hotel-motel tax caps for most Texas areas are below the proposed cap, HB 1908 would unnecessarily single out a few areas within the state that currently have the ability to surpass the proposed cap.

SUBJECT: Eliminating hearings for discharged employees of DPS

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons

0 nays

WITNESSES: For — None

Against — (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas)

On — (*Registered, but did not testify*: Phillip Adkins, Texas Department of Public Safety)

BACKGROUND: Government Code, sec. 411.007 outlines how DPS may terminate officers and employees. An officer or employee who is discharged is entitled to appeal to the Public Safety Commission, during which time the officer or employee is suspended without pay. Discharged officers and employees may apply to the commission for a public hearing, during which the commission affirms or sets aside the discharge on the basis of the evidence presented.

DIGEST: HB 3805 would allow only a commissioned officer to appeal and receive a public hearing after being discharged from the commission. This process would no longer be available to discharged, noncommissioned employees.

The bill would take effect September 1, 2013, and would only apply to DPS officers and employees discharged on or after the effective date.

SUPPORTERS SAY: HB 3805 would align the discharge process for noncommissioned employees of DPS with the process at other agencies, where discharged employees are not entitled to appeal. The unequal treatment of DPS employees is unfair, and it requires the commission to spend an unnecessary amount of time and energy on hearings that can last about 20 to 30 hours on average for a single case. The Public Safety Commission

meets about once a month, and much of the time that should be spent on strategic oversight of the department instead is spent on holding full evidentiary discharge hearings.

Holding hearings for noncommissioned employees also takes up time that could be devoted to holding discharge hearings for commissioned officers. At present, a commissioned officer could wait as long as a year before receiving a discharge hearing before the commission. It is appropriate that discharged commissioned officers receive a hearing for reasons of transparency and to protect the officers against politicized retaliation, for which they are uniquely at risk. Finally, DPS officers hold positions entailing a high degree of personal engagement and sacrifice. Unlike state employees in less critical and potentially hazardous positions, DPS officers should have the right to challenge their dismissal.

Retaining the hearing procedure for commissioned officers helps DPS recruit and retain officers because other local law enforcement agencies frequently offer these types of appeal procedures for officers. To adequately protect the public safety, DPS requires the ability to offer the same job protections to applicants as competitor law enforcement agencies.

OPPONENTS SAY:

This bill would be unfair to DPS noncommissioned employees. They have a right to expect current due process and fair hearing protections from their employer following discharge. Some noncommissioned employees hold positions, such as crime lab technicians, that may also be subject to political retaliation.

By removing the ability of noncommissioned employees from appealing to the commission, the bill would create ambiguity as to how dismissal appeals would be handled. If HB 3805 were enacted, the law still would prevent the department from discharging noncommissioned employees without just cause. DPS employees denied this right might turn to the courts to appeal their dismissals, a more expensive and protracted process for all involved. Keeping the responsibility for these appeals with the Public Safety Commission enables resolution of these cases more quickly and at a more appropriate level.

SUBJECT: Regulation of propane distribution system retailers

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 9 ayes — Keffer, Crownover, Canales, Craddick, Dale, Lozano, Paddie, R. Sheffield, Wu

1 nays — Burnam

1 absent — P. King

WITNESSES: For — Barton Prideaux, Texas Community Propane, Ltd.; *(Registered, but did not testify:* Randall Wilburn, West Travis County MUD No. 5)

Against — None

On — *(Registered, but did not testify:* Mark Evarts, Railroad Commission of Texas; James Osterhaus, Railroad Commission of Texas; William Van Hoy, Texas Propane Gas Association)

DIGEST: CSHB 2532 would require a distribution system retailer to charge a customer a just and reasonable rate for propane gas that could not exceed the allowable spot price plus an allowable markup.

A propane dealer could charge customers reasonable and customary service fees for connection, disconnection, account maintenance, late fees, and reconnection fees. The allowable service fees would be:

- $12.50 to maintain an active account in which more than 99 gallons were used in the prior 12-month period;
- $17.50 for an active account in which fewer than 99 gallons were used in the prior 12-month period;
- $15 for a late payment, where the bill was provide 15 days prior to the due date;
- $25 to disconnect or terminate service from an active or delinquent account;
- $65 for standard next available reconnect service for an active or delinquent account;

- $125 for accelerated reconnect service;
- $30 for a dishonored or canceled payment received;
- $75 to initiate service to a new customer; and
- $225 plus charges for estimated amount of gas consumed and damages for attempted unauthorized gas consumption or diversion.

Dealer requirements and responsibilities. Propane dealers could adjust fee limits based on 12-month changes in the Consumer Price Index beginning with a base period of December 2012.Dealers could pass through to a customer certain taxes and assessments that began or increased after January 1, 2013.

A propane dealer could not disconnect a customer's service on a weekend, holiday, or during an extreme weather emergency, and the dealer would have to make all reasonable efforts to prevent interruptions in service. In the event of a qualified interruption, the propane retailer would be required to document its details and notify the RRC if there was the possibility of hazard.

Propane dealers would have to promptly investigate a written complaint, provide a response, and a keep record of the investigation process. They also would have to provide a disclosure notice to homeowners with consumer rights, areas served, and any agreements that benefited a third party.

Railroad Commission. The RRC could impose a sanction on a propane dealer, such as a customer refund for a violation of allowable rates and fees. The RRC would be required to set up a toll-free phone line for customers to notify the commission of a service interruption or alleged cases of the dealer over-charging for service. The commission would be required to investigate complaints.

The RRC could assume temporary receivership of a propane dealer if they could not restore service within a certain amount of time. And, among other things, the commission could impose sanctions on a propane dealer, such as issuing customers refunds for a violation of allowable rates and fees. The commission would be required to adopt rules necessary to implement this chapter (chapter 141) of the Utilities Code.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2532 would provide clear responsibilities and market-based rate structures for propane dealers and ensure fair, transparent, continuous service to customers. Interested parties, including propane dealers and consumer advocates, agree that the bill would allow propane companies to operate under reasonable regulation and give consumers the expectation of reasonable, transparent services and billing practices.

The bill also would grant the RRC the proper authority to oversee propane dealers, impose sanctions, such as ordering refunds of overcharges, and put a company into temporary receivership if it failed to meet its obligations.

OPPONENTS SAY:

CSHB 2532 could do more to provide penalties that would hold negligent companies accountable and prevent service failures from ever happening.

NOTES:

The Legislative Budget Board estimates that the bill would require the Railroad Commission to hire four full-time-equivalent employees to assume ratemaking responsibilities and oversight required by the bill. This would have a negative impact $347,518 per year on general revenue.

SUBJECT: Providing credit by examination for public school students

COMMITTEE: Public Education — committee substitute recommended

VOTE: 10 ayes — Aycock, Allen, J. Davis, Deshotel, Farney, Huberty, K. King, Ratliff, J. Rodriguez, Villarreal

0 nays

1 absent — Dutton

WITNESSES: For — Anthony Holm, Texans for Education Reform; (*Registered, but did not testify:* Bill Hammond, Texas Association of Business; Adam Jones, Texans for Education Reform; Drew Scheberle, Greater Austin Chamber of Commerce; Theresa Trevino; Paula Chaney Trietsch; Peggy Venable, Americans for Prosperity; Allen Weeks, Save Texas Schools; Justin Yancy, Texas Business Leadership Council)

Against — (*Registered, but did not testify:* Maria Whitsett, Texas School Alliance)

On — (*Registered, but did not testify:* David Anderson, Texas Education Agency)

BACKGROUND: According to State Board of Education (SBOE) rules, school districts must offer examinations for acceleration at every grade level and for every subject area in grades 1-12.

At the option of the local school district, students in grades 6-12 who have not received credit but have received previous instruction in a subject area may earn credit for the subject by passing an exam.

Students in grades 1-5 who have not received instruction at the grade level tested must be promoted one grade if the student achieves a minimum score on the grade-level exam in each of the following subject areas: language arts, mathematics, science, and social studies. School district and parent approval also is required.

DIGEST: CSHB 2694 would change Education Code provisions for students who

seek to be promoted or obtain high school course credit by passing examinations.

The bill would specify that requirements of minimum attendance for class credit did not apply to students who receive credit by examination.

It would require each district to select, if available, at least four SBOE-approved examinations for each subject. The exams would have to include advanced placement (AP) exams administered by the College Board and Educational Testing Service, and exams administered through the College-Level Examination Program (CLEP).

The bill would lower the passing standard for students in primary grades to be promoted and for students in grades 6-12 to receive credit from the 90th to the 80th percentile. Students who received credit would not be required to take an end-of-course assessment.

Students in grades 6-12 could receive credit if they scored a three or higher on a SBOE-approved AP exam administered by the College Board or Educational Testing Service or a scaled score of 60 or higher on a SBOE-approved CLEP exam.

School districts would be required to offer credit by exam within 30 days of a written request from a student or a student's parent or guardian if the exam was offered electronically and at least three times per year if the exam was not offered electronically. Electronic exams could not be administered to a student more than two times each year.

A student could not attempt more than two times to receive credit for a particular subject. If a student failed to test out of a class before the beginning of the school year in which the student ordinarily would be enrolled in that class, the student would have to complete the course.

The bill would take immediate effect if passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013 and would apply beginning with the 2013-14 school year.

SUPPORTERS SAY:

CSHB 2694 would give students more flexibility in shaping their education by allowing them to demonstrate that they were ready to be promoted to a higher grade or receive credit for a course. This would

prevent these high achievers from wasting valuable seat time in a grade or course.

While many legislative efforts focus on helping struggling students, this is one bill that could help advanced students accelerate their learning and get an early start on college. Credit by exam also allows high school students in rural districts with limited course offerings to have access to credits that they might not otherwise be able to obtain.

The bill would make it easier for students to take an exam by requiring the district to respond within 30 days of a request when electronic versions of the tests were available.

The University of Texas, Texas Tech University, and many universities around the nation offer versions of CLEP exams, so it should not be difficult for districts to find four exam versions in any subject. Different tests measure different learning styles so students would have more options to take an appropriate exam.

An 80th percentile passing standard, while lower than the 90th percentile now required, still would be a high standard and an indication that a student had truly mastered a subject. Many top colleges and universities require a 4 score on an AP exam before awarding credit, so a 3 score would be appropriate to award high-school credit.

OPPONENTS SAY:

CSHB 2694 could drive up costs to school districts by requiring them to pay for four different versions of each test. The Legislative Budget Board fiscal note estimates that there likely would be additional administrative costs to districts to administer more exams at more frequent intervals.

Lowering the passing standards for grade promotion and course credit could prompt some students to think credit by exam would be an easy out when it might not be the best option for that student's educational development.

Requiring a student to score a 3 or higher on an AP exam to receive high school credit may be too stringent. Many colleges award college credit for a score of 3.

Allowing students credit by exam for AP courses would be no substitute for a student not having access to AP courses at their local high school.

The bill's 30-day deadline to honor requests for electronically available tests could put new demands on counselors' already demanding duties. It also assumes that electronic tests would be available on demand, and that might not be true for all.

SUBJECT: Traffic regulation in a conservation and reclamation district

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Phillips, Martinez, Fletcher, Guerra, McClendon, Riddle

2 nays — Y. Davis, Pickett

3 absent — Burkett, Harper-Brown, Lavender

WITNESSES: For — Michael Morris, North Central Texas Council of Governments; (*Registered, but did not testify:* Rick Thompson, Texas Association of Counties; Jerry Valdez, Coats Rose Law Firm; Michael Vasquez, Texas Conference of Urban Counties)

Against — None

BACKGROUND: Texas Constitution, Art. 3, Sec. 52 and Art. 16, Sec. 59 govern conservation and reclamation districts.

On October 5, 2010, the Attorney General's office issued an opinion (GA-0809) that restricted a county's ability to regulate traffic in a conservation and reclamation district.

DIGEST: CSHB 2330 would allow a county with a population greater than 80,000 and less than 130,000 and bordering a county with a population greater than 2 million and less than 4 million, to enter into an interlocal contract with the board of a conservation and reclamation district to apply the county's traffic regulations to a public road within the county that was owned, operated and maintained by a conservation and reclamation district, if the commissioners court found that it was in the county's interest to regulate traffic there.

The commissioners court of a county could, by order, apply the county's traffic regulations to and regulate traffic control devices in restricted traffic zones abutting a public road in the county that was owned, operated, and maintained by a conservation and reclamation district if the commissioners court and the board had entered into an interlocal contract. These public roads would be considered county roads for purposes of

applying traffic regulation.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2330 would fill a gap in statute to allow the commissioners court of Kaufman County, bordering Dallas County, to enter into an agreement to regulate traffic on public roads within the county that were also in conservation and reclamation districts. The Office of the Attorney General issued an opinion in 2010 that brought into question the ability of county commissioners to regulate roads in unincorporated areas. CSHB 2330 would make clear that the Kaufman County commissioners court could enter into an agreement with the board of the conservation and reclamation district to regulate traffic in the district.

The bill would improve public safety by allowing a county sheriff's office to regulate traffic on public roads in these districts as if they were any other public road. Current law prohibits Kaufman County from regulating traffic around school districts or putting up stop signs to help keep residents safe.

OPPONENTS SAY:

The bill does not specify who would enforce the traffic laws and what kind of training they would have. It is also unclear that the traffic regulators would be sheriff's officers with appropriate training.

SUBJECT: Imposing fees on sales of certain tobacco products

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Otto, Bohac, Button, Eiland, Strama

1 nay — N. Gonzalez

2 absent — Martinez Fischer, Ritter

WITNESSES: For — James C. Ho, Altria Client Services; Keith A Teel, Altria, RAI Services Inc, Lorillard Tobacco Company; Rob Wilkey, Commonwealth Brands; Monte Williams, Altria; (*Registered, but did not testify:* Jay Brown, McLane Company; Shannon Lucas, March of Dimes; David Reynolds, Texas Medical Association; Jack Roberts, Liggett-Vector Brands; Kandice Sanaie, Texas Association of Business)

Against — Craig Enoch, Independent Tobacco Escrow Manufacturers; Guillermo Fernandez Quincoces, Dosal Tobacco Corporation; Yolanda Nader, Dosal Tobacco Corp; Mike Walters, Global Tobacco; (*Registered, but did not testify:* Carol Boliter, Global Trading Inc., KT&G USA; Ron Hinkle, Dosal Tobacco, Global Tobacco, KT&G)

On —Pete Polite and Scott Wheat, Alabama Coushatta tribe of Texas; (*Registered, but did not testify:* John Heleman, Comptroller of Public Accounts)

DIGEST: CSHB 3536 would impose a fee on the sale, use, consumption, or distribution of cigarettes and certain other tobacco products made by certain non-settling manufacturers (NSMs) that were not part of the Comprehensive Settlement Agreement and Release of 1998 between Texas and major tobacco producers.

Fees on cigarettes and tobacco products from NSMs. CSHB 3536 would set a fee at 2.75 cents per cigarette or on each 0.09 ounces of cigarette tobacco product produced by NSMs that never participated in the 46-state Master Settlement Agreement, of which Texas was not a member. The bill would set the fee for products made by NSMs that had subsequently participated in the Master Settlement Agreement at 0.75

cents per cigarette or each 0.09 ounce of cigarette-tobacco product. The bill would raise the fee on manufacturers that subsequently participated in the Master Settlement to 2.75 cents if the Master Settlement was amended to allow them to take a credit for the payment of the bill's fee on products sold in Texas.

The bill would direct the comptroller to increase the fee annually by the greater of either 3 percent or the rate of inflation. The comptroller would grant distributors who remitted the fee a three percent discount on their purchases of cigarette stamps.

CSHB 3536 would deposit the collected revenue into the general revenue fund.

Any fees remitted by an NSM under this bill would be applied to any judgment or settlement on a claim against the NSM for costs related to the use or exposure of their tobacco products to the public.

Enforcement. CSHB 3536 would apply the normal penalty provisions provided by the Tax Code for enforcement of similar taxes and fees. The comptroller and the attorney general would be allowed to make audits or inspections of the financial records of an NSM and its distributors to ensure compliance.

Reports. CSHB 3536 would require distributors of NSM-made products to report sales data to the comptroller monthly. Exceptions would made for products sold for resale and consumption out of state or to Indian tribes.

Distributors would calculate and remit appropriate fees under the bill to the comptroller along with the monthly reporting data.

The comptroller would be required to report annually to the independent auditor of the Master Settlement the volume of cigarette sales on which the NSM fee was reported and paid. The data would be listed by manufacturer and brand family.

Chewing tobacco. CSHB 3536 would set the tax rate on chewing tobacco at 80 cents per ounce and proportionately on all fractional parts of an ounce.

Effective date. The bill would take effect September 1, 2013, and would not affect any tax liability accrued before that date.

SUPPORTERS SAY:

CSHB 3536 would help level the playing field in the cigarette marketplace by imposing an equity fee in Texas on cigarette manufacturers that were not parties to the state's tobacco settlement agreement. Forty-eight other states apply either an equity fee or an escrow payment obligation on NSM brands. Texas should join them.

Currently, tobacco manufacturers who are parties to the Texas Tobacco Settlement Agreement pay around $500 million a year to Texas. These funds are used for important programs, such as public health and higher education.

However, tobacco companies that either were not around in the late 1990s or were not present in the Texas market have now increased their market share to around 8 percent. They are able to do this because they have an unfair cost advantage in that they do not make payments to Texas under the settlement. This allows them to undercut the companies that responsibly are making payments.

By imposing an equity fee, CSHB 3536 would help to level the marketplace, allowing producers to compete on quality and value of product.

The bill would include a statement of legislative intent. Its purpose would be to:

- recover health care costs to the state imposed by non-settling manufacturers;
- prevent NSMs from undercutting competition and thus undermining the state's policy of reducing underage smoking;
- protect the tobacco settlement agreement and fund, which has been reduced by the unfair competition posed by NSMs;
- ensure even-handed treatment of manufacturers; and
- provide additional state revenue.

It is estimated that the bill would raise around $40 million a year in general revenue. These new fees would increase the cost of smoking, which would reduce the number of smokers, the frequency with which they smoke, and the amount of secondhand smoke in Texas.

CSHB 3536 would be constitutional. The constitution requires that taxes be equal and uniform. CSHB 3536 would help ensure an equal and level playing field for all tobacco manufacturers, thereby treating them with more equality and uniformity than under current law.

OPPONENTS SAY:

NSMs should not be made to pay fees relating to the Texas Tobacco Settlement Agreement because they either were not in the Texas market at that time or they were not engaging in the kind of anti-consumer behavior in which members to the agreement were allegedly engaging. NSMs should not be penalized for this through the fees CSHB 3536 would impose on them.

CSHB 3536 would crush the NSMs economically. They only way these small producers can compete with the largest tobacco producers is on price. Big tobacco, which is part of the settlement, has giant marketing budgets that little NSMs cannot hope to compete with. Imposing additional fees on them would remove this sole method of participating in the market.

The bill would not bring in the money supporters say it would. The fiscal note says it would produce an indeterminate amount. The Texas Legislature should not bank on the $40 million estimate if the Legislative Budget Board and comptroller refuse to do so.

The bill is likely unconstitutional because it would impose a tax on NSMs that other tobacco producers do not pay. Tobacco producers that are part of the settlement have agreed to make those payments to the state. Fees from CSHB 3536 would not be settled upon payments — they would be an unequal tax.